

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant.

C17-5806RJB

UGOCHUKWU GOODLUCK
NWAUZOR, on behalf of all those
similarly situated, and FERNANDO
AGUIRRE-URBINA, individually,

Plaintiffs,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant.

C17-5769 RJB

ORDER ON MOTIONS *IN LIMINE*

1 Preliminary matters. First, the Federal Rules of Evidence govern admissibility of
2 evidence. The court will do its best to follow those rules in ruling on these motions and in
3 conducting the trial. The parties should be aware that the court cannot accurately rule on all
4 evidentiary issues in advance. Many rulings are based on the events of the trial, and many issues
5 can best be resolved at trial rather than preliminarily.

6 Second, the denial of a motion *in limine* does not mean that the subject evidence will be
7 admissible. It simply means that the court cannot rule on the issue in advance.

8 Third, the granting of a motion *in limine* that excludes evidence often requires a re-
9 examination of the issue due to the events of the trial.

10 **Plaintiffs' Motion *in Limine* to Exclude the Testimony of Dan Ragsdale and Tae**
11 **Johnson from the October 12, 2021 retrial (C17-5769RJB, Dkt. 433).**

12 It appears to the Court that is should deny the motion insofar as it is based on *Touhy*
13 authorization. That is a complex matter, best left to counsel and the witnesses. Certainly, no
14 witnesses should be asked to testify to matters prohibited by *Touhy* concerns, and it is fair
15 inquiry to clarify those matters as preliminary to substantive testimony. What is, perhaps, more
16 interesting is the question of what these witnesses have to offer in the way of relevant testimony
17 in regard to the issues in this case. For example testimony about what GEO pays detainees under
18 a Voluntary Work Program in other jurisdictions is likely not relevant. Such issues can better be
19 resolved at trial. For those reasons, Plaintiffs' Motion *in Limine* to Exclude the Testimony of
20 Dan Ragsdale and Tae Johnson from the October 12, 2021 retrial (C17-5769RJB, Dkt. 433)
21 should be DENIED.

1 **State of Washington's Additional Motions *in Limine* in Advance of October 12**
2 **Retrial (C17-5806RJB, Dkt. 545).**

3 1) Exclude All Evidence of Work Programs at State and Local Government
4 Facilities. It is clear that the defense of intergovernmental immunity is out of the case.
5 (C17-5806RJB, Dkt. 531). With that ruling, comparison of the Voluntary Work Program
6 operated by GEO with the State of Washington's voluntary work programs, for immunity
7 comparison, is also out of the case. To that extent, the State's motion should be
8 GRANTED. Like other issues in this case, implementation of this ruling can better be
9 handled at trial.

10 2) Exclude All Witnesses and Argument Related to L & I's History of MWA
11 Enforcement at the NWDC. During the first trial, considerable time and effort was spent
12 on admissibility of inadmissible (for various reasons) documents purporting to show, but
13 never showing, that the Department of Labor and Industries made a finding, binding on
14 the State, that the Minimum Wage Act did not apply to the Voluntary Work Program at
15 the Ice Processing Center. The most that could be said, from the exhibits presented, was
16 that the Department of Labor and Industries looked at the program and never started an
17 enforcement action. If the Court's recollection is correct, even that was not supported by
18 admissible exhibits. We should not go through that wasteful exercise again, particularly
19 because what the Department of Labor and Industries did or failed to do is not relevant to
20 the question now raised by the State in this enforcement action. There is no defense
21 there. However, it is perhaps relevant, to create argument, in very brief evidence that the
22 Department of Labor and Industries or the Attorney General's Office, could start a
23 Minimum Wage Act enforcement, and neither did so, until now. This motion *in limine*
24 should be GRANTED to the foregoing extent.

1 3. Exclude All Evidence and Arguments Regarding L & I's Administrative
2 Policy Guidance ES.A.1. The Department of Labor and Industries administrative policy
3 is confusing as applied to this case, and proves nothing. It should be excluded and
4 Plaintiff's motion *in limine* granted. My grandfather, a long-time lawyer, used to say that
5 a lawyer should keep his (or her) eye on the rabbit. The rabbit here is whether the
6 Voluntary Work Program detainees are employees under the State of Washington
7 Minimum Wage Act. The non-binding Department of Labor and Industries' Policy
8 Guidance found in ES.A.1 (Exhibits A308 & A321) are not near the rabbit, and can only
9 cause the shooter to miss. It is side information unrelated to the target, and should be
10 excluded. This motion *in limine* should be GRANTED.

11 4. Exclude All Witnesses Not Previously Disclosed. This motion appears to only
12 address a Dr. George Foley, author of Exhibit 365A. In so far as it may relate to other,
13 unnamed, witnesses not previously disclosed, those matters will be dealt with when and if
14 such unnamed witnesses are called at trial.

15 As to Dr. Foley, the following ruling appears fair and within the scope of the
16 rules: If Exhibit 365A is offered, or discussed, at trial, Dr. Foley may be called to testify
17 only about that exhibit. Late disclosure to that extent appears to be harmless to Plaintiffs.

18 Dr. Foley may not be called to testify about any other matters, specifically "the
19 mission, goals, and contracting principles of GEO." To now allow such testimony from a
20 witness not properly disclosed is neither substantially justified nor harmless to Plaintiffs.
21 See FRCP 37(c)(1). To that extent, this motion *in limine* should be GRANTED, in part.

1 **Defendant The GEO Group Inc.’s Supplemental Motions *in Limine* (C17-5769RJB,**
2 **Dkt. 436 & C17-5806RJB, Dkt. 548).**

3 A. Exclusion of all evidence or argument related to GEO’s size, profitability,
4 financial status or overall wealth. The motion relating to national “profitability, financial
5 status and overall wealth” should be GRANTED and excluded from testimony.

6 However, some brief evidence of GEO’s size is relevant as introduction, and local
7 finances are relevant to the impact on GEO of the way Voluntary Work Programs
8 detainees are used at the Center, and may be offered. This motion should be GRANTED
9 IN PART to the foregoing extent only.

10 B. Exclusion of Argument that the WMWA was “applicable” to detainees at the
11 time GEO signed its contract with ICE. This motion *in limine* presents a legal question
12 not properly resolved by an order *in limine*. The Court recalls no evidence about
13 discussion of Minimum Wage Act applicability at the time of contracting. The contract
14 speaks for itself. This motion *in limine* should be DENIED.

15 C. Exclude Argument Related to Detainees’ Immigration Backstories.
16 Reasonable backstories of witnesses on both sides will be allowed and was not overdone
17 in the first trial. Beside general introduction information, detainees are, unfortunately
18 and unfairly, lumped in with prisoners who are detained in other institutions for criminal
19 acts. It is appropriate to show that they are in a different category. This motion *in limine*
20 should be DENIED.

21 D. Exclude Argument About Other GEO Facilities. Generally, testimony about
22 other GEO facilities is only relevant to show GEO pays more than \$1.00 per day on
23 occasion and is not limited to paying \$1.00 per day. This motion *in limine* should be
24 DENIED.

1 E. Exclude Testimony of John Patrick Griffin Regarding Food Quality and Any
 2 Other Derogatory Statements about Food at the Center. This motion *in limine* should be
 3 DENIED.

4 F. Exclude Argument of Robin Gard that VWP positions should have or could
 5 have been filled by non-detainee Washington Citizens or Residents. This motion *in*
 6 *limine* should be DENIED. Mr. Gard's testimony is responsive to the continuing attack
 7 on the State's motives in bringing this case.

8 G. Exclude Any Pejorative and Degrading Remarks by Counsel as to GEO's
 9 Character or Malign Intent or Motivation Not to Pay Persons What the Law Requires
 10 Them to be Paid. This motion *in limine* should be DENIED. All counsel should avoid
 11 remarks and argument not supported by the evidence or lack of evidence. For example it
 12 is not OK to say that a party "works to prey upon the sympathies of the jurors by turning
 13 the case into a narrative of extortion" (Dkt. 556 at page 1). Extortion is a crime.
 14 Extortion indeed!

15 H. To Exclude Extraneous Financial Information. Extraneous financial
 16 information should not be admitted. The evidence referenced from the first trial was not
 17 extraneous. This motion *in limine* should be DENIED.

18 I. To Admit GEO's Previously Disclosed Security Videos at Trial as a Business
 19 Record Pursuant to FRE 803(6). This motion *in limine* should be DENIED for the
 20 reasons stated by the Court at the first trial. (*See* Plaintiff's response at C17-5806RJB,
 21 Dkt. 554 at page 17).

22 **IT IS SO ORDERED.**

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 28th day of September, 2021.

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5 ROBERT J. BRYAN
6 United States District Judge
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